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Attorneys for Plaintiff Barry Beitler

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

Case No. 8:17-bk-10706-SC

JOHN JEAN BRAL

Chapter 11

Debtor and Debtor-in-Possession.

Adv. Case No. 8:17-ap-01092-SC

BARRY BEITLER.

Plaintiff.

V.

JOHN JEAN BRAI

Defendant

**DECLARATION OF KRIKOR J.
MESHEFEJIAN AND REQUEST FOR
JUDICIAL NOTICE IN SUPPORT BARRY
BEITLER'S OPPOSITION TO MOTION
TO BIFURCATE ISSUES OF LIABILITY
AND DISCHARGEABILITY IN
ADVERSARY, OR TO STAY
ADVERSARY UNTIL UNDERLYING
LIABILITY ON CLAIMS IS
DETERMINED IN ANOTHER
PROCEEDING**

Date: October 19, 2017
Time: 11:00 a.m.
Place: Courtroom 5C
411 West Fourth Street
Santa Ana, CA

DECLARATION OF KRIKOR J. MESHEFEJIAN

I, Krikor J. Meshefesian, hereby declare as follows:

1. I have personal knowledge of the facts set forth herein, and, if called as a witness, could and would testify competently with respect thereto.

2. I am an attorney with the law firm of Levene, Neale, Bender, Yoo & Brill L.L.P counsel to the Beitler Creditors (as listed on the top left hand corner of the first page of this document). I am licensed to practice law in the State of California and before this Court.

3. I make this Declaration in support of the Opposition filed by the Beitler Creditors to that certain *Motion To Bifurcate Issues Of Liability And Dischargeability In Adversary, Or To Stay Adversary Until Underlying Liability On Claims Is Determined In Another Proceeding* (the “Motion”) [Doc. No. 9] filed by Defendant John Jean Bral (the “Debtor”).

4. Attached as Exhibit A to this Declaration is a true and correct copy of that certain *Beitler Creditors' Status Conference Statement*, filed by the Beitler Creditors in the Debtor's main bankruptcy case, at docket no. 41, without exhibits, which I downloaded using PACER.

5. Attached as Exhibit B to this Declaration is a true and correct copy of the transcript of hearings held in this Court on January 29, 2015, in the voluntary bankruptcy case of Ocean View Medical Investors, LLC, Case No. 8:14-bk-16860-SC. I obtained a copy of the transcript by downloading it using the PACER electronic case filing system. The transcript is filed as Docket No. 48 in Ocean View Medical Investors, LLC's now-dismissed voluntary bankruptcy case.

6. Attached as Exhibit C to this Declaration is a true and correct copy of the transcript of hearings held in this Court on February 12, 2015, in the involuntary bankruptcy case of Ocean View Medical Investors, LLC, Case No. 8:15-bk-10624-SC. I obtained a copy of the transcript by downloading it using the PACER electronic case filing system. The transcript is filed as Docket No. 12 in Ocean View Medical Investors, LLC's now-dismissed involuntary bankruptcy case.

7. Attached as Exhibit D to this Declaration is a true and correct copy of that certain *Order Dismissing Involuntary Chapter 7 Case And Imposing A 180-Day Bar To Refiling* entered by this Court in Ocean View Medical Investors, LLC's involuntary bankruptcy case, which I downloaded using PACER.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 5th day of October, 2017, at Los Angeles, California.

/s/ *Krikor Meshefjian*
KRIKOR MESHEFEJJIAN

REQUEST FOR JUDICIAL NOTICE

The Beitler Creditors respectfully request that the Court take judicial notice of the following documents submitted in support of the concurrently filed Opposition to the *Motion To Bifurcate Issues Of Liability And Dischargeability In Adversary, Or To Stay Adversary Until Underlying Liability On Claims Is Determined In Another Proceeding* (the “Motion”) [Doc. No. 9] filed by Defendant John Jean Bral (the “Debtor”).

1. **Exhibit A:** *Beitler Creditors' Status Conference Statement*, filed by the Beitler Creditors in the Debtor's main bankruptcy case, at docket no. 41.
2. **Exhibit B:** Transcript of hearings held in this Court on January 29, 2015, in the voluntary bankruptcy case of Ocean View Medical Investors, LLC, Case No. 8:14-bk-16860-SC.
3. **Exhibit C:** Transcript of hearings held in this Court on February 12, 2015, in the involuntary bankruptcy case of Ocean View Medical Investors, LLC, Case No. 8:15-bk-10624-SC.
4. **Exhibit D:** *Order Dismissing Involuntary Chapter 7 Case And Imposing A 180-Day Bar To Refiling* entered by this Court in the involuntary bankruptcy case of Ocean View Medical Investors, LLC, Case No. 8:15-bk-10624-SC.

A. Judicial Notice Is Appropriate Because The Bankruptcy Court Filings Are Not Subject To Reasonable Dispute.

Pursuant to Federal Rule of Evidence 201(b) a court may take judicial notice of a fact not subject to reasonable dispute because it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). It is well established that a court “may take judicial notice of court filings and other matters of public record.” *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (taking judicial notice of briefs, pleadings, memoranda, and expert reports filed in a different litigation because the documents were “readily verifiable and, therefore, the proper subject of

1 judicial notice") (citing *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d
2 1360, 1364 (9th Cir. 1998)); *see Stanwyck v. Bogen (In re Stanwyck)*, 450 B.R. 181, 208 (Bankr.
3 C.D. Cal. 2011) (taking judicial notice of an order granting a motion to dismiss, and the findings
4 of fact and conclusions of law contained in the memorandum of decision); *Alton v. Medtronic,*
5 *Inc.*, No. 3:13-CV-409, 2013 WL 4786381 (D. Or. Sept. 6, 2013) (taking judicial notice of
6 Notice of Ruling issued by Los Angeles County Superior Court and other court documents
7 including judgment of dismissal, court order, and judgment). Judicial notice may be taken at any
8 stage of the proceeding. Fed. R. Evid. 201(d).

9 **B. The Court May Take Judicial Notice On Its Own And Must Take Judicial Notice**
10 **Where It Is Requested By A Party And The Court Is Supplied With The Necessary**
11 **Information.**

12 The Court may take judicial notice on its own. Fed. R. Evid. 201(c)(1). Moreover, a
13 court must take judicial notice if requested by a party and supplied with the necessary
14 information. Fed. R. Evid. 201(c)(2). Here, the Beitler Creditors have requested judicial notice
15 and are supplying the Court with true and correct copies of the above-referenced exhibits, which
16 are attached to this Request for Judicial Notice.

17 Dated: October 5, 2017 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
18

19 By: /s/ Krikor J. Meshefjian

20 GARY E. KLAUSNER

21 KRIKOR J. MESHEFEJIAN

22 Attorneys for Barry Beitler

23

24

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EXHIBIT “A”

1 GARY E. KLAUSNER (SBN 69077)
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16 Attorneys for Creditors Barry Beitler; Cannae
17 Financial, LLC; AFG Investment Fund 7, LLC;
18 BAB 8 LLC; Beitler & Associates, Inc.
19 dba Beitler Commercial Realty Services; and
20 Steward Financial LLC

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

In re

JOHN JEAN BRAL,

Debtor and Debtor-In-Possession.

Case No. 8:17-bk-10706-SC

Chapter 11

BEITLER CREDITORS' STATUS
CONFERENCE STATEMENT

Date: April 20, 2017
Time: 11:00 a.m.
Courtroom 5C

1 **I. INTRODUCTION**

2 Barry Beitler (“Beitler”), Cannae Financial, LLC (“Cannae”), AFG Investment Fund 7,
3 LLC (“AFG 7”), BAB 8, LLC (“BAB 8”), Beitler & Associates, Inc. dba Beitler Commercial
4 Realty Services (“BCRS”), and Steward Financial LLC (“Steward”) [collectively, the Beitler
5 Creditors”] hereby submit this statement in advance of the Status Conference scheduled for
6 April 20, 2017 in the above-captioned case. This statement is intended to provide the Court with
7 material information concerning this bankruptcy case, the Beitler Creditors’ claims, and
8 litigation between the Beitler Creditors and the Debtor and Debtor-in-Possession, John Bral
9 (“Bral”).

10 **II. THE PRIOR UNAUTHORIZED AND IMPROPER BANKRUPTCIES**

11 **A. Background.**

12 Beitler and Bral have been co-managing members of various “single purpose entities”
13 (“SPEs”), each of which is a limited liability company (“LLC”) formed for the purpose of
14 acquiring, developing and/or operating a particular real property. One of these SPEs was Ocean
15 View Medical Investors, LLC (“Ocean View”).

16 As of March 2014, (a) Ocean View had been in default for nearly two years on a loan
17 (the “Ocean View Loan”) held by First-Citizens Bank & Trust Company (“First Citizens”),
18 (b) First Citizens had commenced litigation in the Los Angeles County Superior Court, Case No.
19 BC525778 (the “First Citizens Action”) against Beitler and Bral to enforce their personal
20 guaranties of the Ocean View Loan, (c) First Citizens sought writs of attachment against Beitler
21 and Bral to enforce their respective guaranty obligations, and (d) Bral had not paid anything on
22 his guaranty obligation or taken action to cause the Ocean View Loan to be paid.

23 Beitler, facing the issuance of a writ of attachment against him, and with Bral apparently
24 content to leave Beitler to shoulder the entire amount of the Ocean View Loan obligation, began
25 negotiating with First Citizens to purchase the Ocean View Loan and associated rights, claims
26 and documents (collectively, the “Ocean View Loan Claims”). After providing notice of these
27 negotiations to Bral and the other members of Ocean View, and inviting them to participate, and
28 neither Bral nor any of the other members having accepted the invitation, Beitler formed Steward

1 and Steward entered into a loan purchase agreement with First Citizens for its par value and for
2 Steward to acquire the Ocean View Loan Claims, including without limitation the security
3 interest in the real property securing the Ocean View Loan and the right to enforce Bral's
4 personal guaranty.

5 Bral filed an action against Beitler on April 15, 2014 in Orange County Superior Court,
6 Case No. 30-2014-00717169 (the "Injunction Action"), in which Bral sought to enjoin the
7 acquisition of the Ocean View Loan Claims from First Citizens. On June 9, 2014, the Orange
8 County Superior Court denied Bral's motion for a preliminary injunction. Steward then acquired
9 the Ocean View Loan Claims from First Citizens and substituted in as plaintiff in place of First
10 Citizens in the First Citizens Action. The Injunction Action was later transferred to the Los
11 Angeles County Superior Court, which on January 12, 2015 sustained Beitler's demurrer to
12 Bral's complaint [Ex. 1 (Ex. 11)]. At Bral's request, the Injunction Action was dismissed on
13 May 29, 2015.

14 **B. Bral's Unauthorized Filing of a "Voluntary" Bankruptcy for Ocean View to
15 Interfere with Foreclosure on the Ocean View Property.**

16 Once Steward acquired the Ocean View Loan Claims, notice of a trustee's foreclosure
17 sale of Ocean View's real property duly issued. The foreclosure sale, after having been
18 rescheduled multiple times, was set for November 21, 2014. At the foreclosure sale that
19 morning, Steward acquired the Ocean View property for a credit bid of \$3,000,000.

20 After the foreclosure sale, however, Steward was informed that Ocean View purportedly
21 filed for bankruptcy that morning, which voided the foreclosure sale. That bankruptcy was filed
22 in this Court as Case No. 8:14-bk-16860-SC (the "Ocean View Voluntary Bankruptcy") and was
23 assigned to Bankruptcy Judge Scott Clarkson [Ex. 2]. Notwithstanding that the Articles of
24 Organization and provide for two (2) Managers, and the annual filing of the State of Information
25 designate both Beitler and Bral as Managers, and the Operating Agreement also designates both
26 Beitler and Bral as Managers, requiring the consent of both Managers for an action by the
27 Managers, Bral signed the bankruptcy petition on behalf of Ocean View and signed the
28 accompanying declaration.

1 Beitler did not authorize, was not asked to authorize, and was not aware of the Ocean
2 View Voluntary Bankruptcy until after it was filed. Accordingly, on December 31, 2014, Beitler
3 filed a motion to dismiss the Ocean View Voluntary Bankruptcy for lack of authorization [Ex.
4 3]. While the motion was pending, Bral admitted at the meeting of creditors on January 8, 2015
5 that he did not inform Beitler of his intent to file, let alone obtain Beitler's consent to, the Ocean
6 View Voluntary Bankruptcy [Ex. 4 at 28:2-17].

7 In the opposition to Beitler's motion to dismiss, Bral claimed that (i) Beitler had been
8 removed as a manager of Ocean View on July 23, 2014 and (ii) a resolution to authorize the
9 Ocean View Voluntary Bankruptcy issued on November 20, 2014, the day before it was filed, for
10 the purpose of preventing the November 21, 2014 foreclosure sale [Ex. 5 at 7:2-21, 9:8-10]. As
11 Beitler showed in his reply papers in support of the motion to dismiss [Exs. 6 and 7], (a) before
12 January 2015, Beitler had not been aware of his supposed July 23, 2014 removal as manager,
13 (b) Beitler had never received any notice of any meeting or any proposed resolution to remove
14 him as manager, (c) Bral's subsequent communications with Beitler did not mention or reflect
15 the supposed removal, and (d) after the supposed removal, Bral continued to treat Beitler as a
16 manager of Ocean View, including without limitation motions and declarations that Bral filed in
17 September and October 2014 in the Injunction Action that (i) were premised on Beitler being a
18 manager of Ocean View and (ii) did not mention the supposed removal.

19 At a hearing on January 29, 2015, the Court adopted its tentative ruling and dismissed the
20 Ocean View Voluntary Bankruptcy because it was not authorized by Beitler, who had not been
21 properly removed as a manager [Exs. 8 and 9 at 19:1-8]. In the Tentative Ruling, the Court
22 stated:

23 "Beitler was not properly removed as manager of the Debtor.
24 Under the terms of the operating agreement, the bankruptcy filing
25 could only be authorized either by both managers or by a vote of
26 the entire membership. Furthermore, the Debtor treated and
27 acknowledged Beitler as a manager during the state court
litigation. There is no evidence that the bankruptcy filing was
officially and correctly authorized, and the case should therefore be
dismissed."

1 On February 6, 2015, the Court entered its order dismissing the Ocean View Voluntary
2 Bankruptcy [Ex. 10].

3 **C. The Involuntary Bankruptcy That Bral Improperly Caused to Be Filed.**

4 On February 9, 2015, while the ink was still drying on the order dismissing the Ocean
5 View Voluntary Bankruptcy, a purported involuntary bankruptcy case against Ocean View was
6 filed in this Court as Case No. 8:15-bk-10624-SC (“Ocean View Involuntary Bankruptcy”) [Ex.
7 11] and was assigned to Judge Clarkson. The Court immediately issued an Order to Show Cause
8 requiring the petitioning creditors to appear in Court on February 12, 2015 to show cause why
9 the Ocean View Involuntary Bankruptcy should not be dismissed for bad faith [Ex. 12]. At the
10 evidentiary hearing on February 12, 2015, Judge Clarkson examined the petitioning creditors
11 who appeared [Ex. 13] and after hearing their testimony, the Court found that the Ocean View
12 Involuntary Bankruptcy was the product of their collusion with Bral and would be dismissed for
13 bad faith [Ex. 13 at 21:1-25:17]. That same day, the Court entered its order dismissing the
14 Ocean View Involuntary Bankruptcy with a 180-day bar to refiling [Ex. 14].

15 In subsequent deposition testimony in state court litigation between Steward and Bral
16 [Exs. 15 and 16], one of the petitioning creditors, Nuray DePriest (“DePriest”), confirmed that
17 the Ocean View Involuntary Bankruptcy was a collusive bad faith case. Among other things,
18 DePriest testified that:

- 19 • The purported signature of Beitler on a \$50,000 promissory note dated October
20 14, 2010 (the “\$50,000 Note”), which Bral signed and gave her on behalf of
21 Ocean View, was forged [Ex. 15 at 110:5-112:2, 126:16-127:18, 160:7-161:16
22 and Exs. 5 & 22 to 10/6/16 depo].
- 23 • Bral told DePriest that he would hire an attorney but that she would have to file
24 the bankruptcy but that Bral cannot be involved and that DePriest would have to
25 say that she filed the case herself [Ex. 15 at 45:19-46:25, 59:20-60:1, 61:21-25].
- 26 • Bral, his assistant Raquel, and his attorney prepared the paperwork for the Ocean
27 View Involuntary Bankruptcy [Ex. 15 at 47:10-25, 63:7-19].

- 1 • Bral gave DePriest cash to pay the filing fee for the Ocean View Involuntary
2 Bankruptcy [Ex. 15 at 48:1-8, 63:20-22].
- 3 • Bral and Raquel, not DePriest, identified the other petitioning creditors [Ex. 15 at
4 55:7-24].
- 5 • Bral, not DePriest, contacted and hired the attorney for the petitioning creditors
6 [Ex. 15 at 68:7-69:2].
- 7 • Bral had DePriest communicate with Raquel, including by text message, rather
8 than Bral with respect to the Ocean View Involuntary Bankruptcy so that there
9 would not be a written record of Bral's involvement [Ex. 15 at 56:2-15, 137:12-
10 142:25 & pp. 13-21 through 13-27 of Ex. 13 to 10/6/16 depo].
- 11 • Before the February 12, 2015 hearing, when DePriest, Bral and the attorney Bral
12 hired for the Ocean View Involuntary Bankruptcy were discussing DePriest's
13 testimony, (i) DePriest showed Bral and the attorney the original \$50,000 Note
14 that had Beitler's purported signature (the "Forged Original"), (ii) Bral took the
15 original \$50,000 Note from DePriest and went to his office, (iii) Bral returned a
16 half hour later with an alternate version of the \$50,000 Note that only had Bral's
17 signature (the "Alternate Version"), and (iv) Bral told DePriest to show the Court
18 only the Alternate Version, not the Forged Original [Ex. 15 at 41:9-45:12, 49:12-
19 24, 171:12-20 and Exs. 4, 5 & 22 to 10/6/16 depo]
- 20 • Before DePriest testified at the February 12, 2015 hearing, Bral told her to lie to
21 this Court, including without limitation (a) to tell the Court that (i) she had not
22 spoken to Bral about the Ocean View Involuntary Bankruptcy, (ii) she, not Bral,
23 prepared the petition, (iii) she, not Bral, organized the petitioning creditors and
24 hired their attorney, and (iv) she paid the filing fee from her own funds, not from
25 money provided by Bral, and (b) not to show the Court the Forged Original of the
26 \$50,000 Note [Ex. 16 at 317:19-319:24].

1 **D. The Damage to Steward from the Unauthorized and Improper Bankruptcies.**

2 After both of the purported Ocean View bankruptcies had been dismissed, on March 20,
3 2015 another foreclosure sale of the Ocean View property was held. At this sale, Steward again
4 purchased the property for a credit bid, but this time was forced to bid \$4,100,000. The damage
5 to Steward from having to bid an additional \$1.1 million over the price at which it would have
6 purchased the property on November 21, 2014, but for the Ocean View Voluntary Bankruptcy, is
7 the subject of one of the pending state court actions against Bral.

8 **III. THE STATE COURT ORDERS AND JUDGMENTS AGAINST BRAL**

9 **A. The Cannae Judgment and Liens Against Bral.**

10 On July 16, 2015, after granting Cannae's motion for summary judgment, the Orange
11 County Superior Court entered a judgment in favor of Cannae and against Bral for \$313,041.69,
12 plus prejudgment interest, costs and attorney's fees [Ex. 17]. Cannae obtained judgment liens on
13 Bral's real property by recording abstracts of judgment in Orange, Los Angeles and Kern
14 Counties in August 2015 [Exs. 18, 19 and 20]. In addition, Cannae obtained a lien on Bral's
15 interests in another SPE, Westcliff Investors, LLC ("Westcliff"), by filing a motion in September
16 2015 for a charging order against Bral's interest in Westcliff [Ex. 21], which charging order
17 issued on December 7, 2015 [Ex. 22].

18 **B. The Beitler Judgments.**

19 In November 2016, Beitler obtained judgments in the Los Angeles County Superior
20 Court against Bral in two separate cases. On November 7, 2016, after the court in Case No.
21 BC 532523 struck Bral's answer to Beitler's complaint, and entered Bral's default, as a
22 discovery sanction for repeated failure to comply with his discovery obligations [Ex. 23], the
23 Court entered judgment by default in favor of Beitler and against Bral in the sum of \$2,514,631
24 (the "Default Judgment") [Ex. 24]. The claims that gave rise to the Default Judgment concerned
25 various SPEs and properties.

26 On November 17, 2016, in Case No. BS 146302, following a trial by a private judge on
27 Beitler's claims against Bral arising from an agreement between Beitler and Bral concerning
28 various loans and advances, the Court entered judgment in favor of Beitler and against Bral in

1 the sum of \$753,610.29 (including prejudgment interest, attorneys' fees and costs) (the "Private
2 Judge Case Judgment") [Ex. 25].

3 On January 18, 2017, Beitler obtained liens on Bral's interests in Westcliff and another
4 SPE, Mission Medical Investors, LLC ("Mission"), by filing motions for charging orders with
5 respect to both the Default Judgment and the Private Judge Case Judgment [Exs. 26, 27, 28 and
6 29]. Those motions were pending when Bral filed this bankruptcy case on February 24, 2017.

7 In addition, after the Injunction Action was transferred to Los Angeles County Superior
8 Court and was dismissed, Beitler obtained an Order on February 29, 2016 awarding him
9 attorneys' fees against Bral in the sum of \$64,576 (the "Fee Award") [Ex. 30].¹

10 **C. The Monetary Sanctions Orders Against Bral and His Counsel.**

11 In addition to the terminating sanctions that resulted in the Default Judgment against
12 Bral, the courts in various state court actions issued monetary sanctions awards totaling \$23,137
13 against Bral or his counsel [Exs. 32 through 37], as summarized in the attached chart [Ex. 38].
14 Except for the \$2,500 award against Bral's counsel [Ex. 33], none of these sanctions have been
15 paid.²

16 **IV. THE PENDING STATE COURT LITIGATION**

17 By filing this bankruptcy, Bral purported to preclude the Beitler Creditors from
18 enforcing:

19

- 20 • The Default Judgment;
- 21 • The Private Judge Case Judgment;
- 22 • The Cannae Judgment;
- 23 • The Fee Award.

24 Indeed, Bral admits in his April 6, 2017 Status Conference Report that he filed this
25 bankruptcy to impede Beitler's efforts to enforce the Default Judgment and Private Judge Case
26 Judgment by obtaining charging orders against Bral's interests in Mission and Westcliff [see
27 Docket No. 37 at 2:11-16].

28

¹ Cannae also obtained an attorney fee award against Bral from the Orange County Superior Court on March 21, 2016 in the sum of \$19,252 [Ex. 31].

² As noted in the chart [Ex. 38], the \$2,000 award [Ex. 36] was later stricken.

1 In addition, Bral has apparently used this bankruptcy to try to stay pending litigation
2 between Bral and the Beitler Creditors, including:

3 • The First Citizens Action, in which Steward seeks to enforce Bral's guaranty of the
4 Ocean View Loan, which case was set for trial on May 1, 2017;

5 • Beitler's action against Bral and two of Bral's entities, Venture RE Group and Bral
6 Realty Advisors, Inc., which was was set for trial on June 12, 2017;

7 • Another pending action by Cannae in the Orange County Superior Court against Bral
8 on his guaranty of a loan with respect to a property in Visalia, California, in which
9 Cannae had obtained a \$1.2 million default judgment before the default was vacated;
10 and

11 • Steward's action for damages resulting from the unauthorized and improper Ocean
12 View bankruptcies that interfered with Steward's foreclosure sale of the Ocean View
13 property, which was set for trial on October 30, 2017.

14 **V. CONCLUSION**

15 The Beitler Creditors respectfully submit the foregoing and attached information to the
16 Court for its consideration in determining how to proceed with this bankruptcy case. Beitler
17 Creditors expressly reserve any and all of their rights and remedies, whether in this Court or any
18 other state or federal court, and whether under bankruptcy law or non-bankruptcy law.

19 Dated: April 13, 2017

20 GARY E. KLAUSNER
21 KRIKOR J. MESHEFEJIAN
22 LEVENE, NEALE, BENDER, YOO
23 & BRILL L.L.P.

24 By: /s/Gary E. Klausner
25 GARY E. KLAUSNER
26 Attorneys for the Beitler Creditors

27 [Signature Page Follows]

1 Dated: April 13, 2017

2 TOM LALLAS
3 MARK D. HURWITZ
4 LEVY, SMALL & LALLAS
5 A Partnership Including Professional Corporations

6
7 By: /s/Mark D. Hurwitz
8 MARK D. HURWITZ
9 Attorneys for the Beitler Creditors

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EXHIBIT “B”

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

--oo--

1 In Re: : Case No. 8:14-BK-16860-SEVEN
2 COUNTIES :
3 :
4 OCEAN VIEW MEDICAL INVESTORS, :
5 LLC, :
6 : Santa Ana, California
7 Debtor. : Thursday, January 29, 2015
8 : 11 a.m.
9

10 HEARING RE: MOTION OF MANAGING
11 MEMBER BARRY BEITLER TO DISMISS
12 BANKRUPTCY CASE FOR LACK OF
13 AUTHORIZATION

14 TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE SCOTT CLARKSON
16 UNITED STATES BANKRUPTCY JUDGE

17 APPEARANCES:

18 For the Debtor LEWIS R. LANDAU, ESQ.
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21 888: 822-4340

22 For Barry Beitler Tom Lallas, Esq.
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(Continued)

Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

APPEARANCES:

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2 Court Recorder

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714: 338-5311

3 Transcriber

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SANTA ANA, CALIFORNIA, THURSDAY, JANUARY 29, 2015, 12:19 P.M.

1 (Call to order of the Court:)

2 THE COURT: Ocean View Medical Investors, Number 12.

3 This is a motion of the managing member, Barry Beitler to
4 dismiss the bankruptcy case for lack of authorization.

5 Appearances, please.

6 MR. LALLAS: Good afternoon, Your Honor. Tom Lallas
7 of Levy, Small & Lallas appearing on behalf of the moving
8 party.

9 THE COURT: Mr. Lallas, always good to see you.

10 MR. LALLAS: Nice to see you, Your Honor.

11 MR. LANDAU: Good morning, Your Honor. Lewis Landau
12 for the debtor.

13 THE COURT: Mr. Landau, again always good to see you,
14 too.

15 MR. LANDAU: Thank you, Your Honor.

16 MS. LAWSON: Good morning, Your Honor. Elizabeth --
17 good afternoon, Your Honor. Elizabeth Lawson, trial attorney.
18 I'm appearing on behalf of Peter C. Anderson, United States
19 Trustee.

20 THE COURT: Good morning -- or good afternoon.

21 MR. LALLAS: Having considered the tentative ruling,
22 Mr. Beitler will submit subject to any reply comments, Your
23 Honor.

24 THE COURT: Thank you.

25 MR. LANDAU: Your Honor, thank you. I have the

1 unenviable position of taking the podium with a tentative that
2 says the Court adopts Mr. Lallas' reply brief and is prepared
 to dismiss the case for lack of authorization.

4 THE COURT: Well, first of all, I'm not going to have
you sit here and paraphrase my tentatives --

MR. LANDAU: Understood.

The Court agrees with the interpretation of the
9
operating agreement and the discussion of the pre-petition
10 actions and state court declarations regarding Barry Beitler's,
11 who I'm going to refer to as Beitler's continued service as
12 manager, as set forth in the Beitler reply filed 1/22/2015,
13 which is Docket Number 33. Beitler was not properly removed as
14 the manager of the debtor. Under the terms of the operating
15 agreement, the bankruptcy filing could only be authorized
16 either by both managers or by a vote of the entire membership.
17 Furthermore, the debtor treated and acknowledged Beitler as
18 manager during the state court litigation. There is no
19 evidence that the bankruptcy filing was officially and
20 correctly authorized, and the case should therefore be
21 dismissed.

22 That's what happens when you paraphrase and puts
23 words into my mouth that I didn't say.

MR. LANDAU: It shall not happen again.

THE COURT: Well, it's your cup of hemlock if you

choose.

MR. LANDAU: Understood. Your Honor, I pointed out the reply brief and those erroneous comments that I made because the argument -- the key argument, the analysis of the procedures and the process for removal came in, in the reply with no opportunity for rebuttal.

The motion was narrow. The motion just said lack of authorization. Our opposition said no, there's a July 23rd resolution that removed Mr. Beitler leaving only one manager, and then the reply came with all of the heavy analysis.

THE COURT: Right. Now, let me ask you this.

MR. LANDAU: Yes, Your Honor.

THE COURT: If the -- if he was removed on July 23, why do you state court pleadings say that he was still the member after that date?

MR. LANDAU: I believe that that is a time of timing as to the allegation of breach of fiduciary duty not being specific and not recognizing this issue. All of the allegations of breach of fiduciary duty relate to before July 23rd. I don't believe that the state court litigators were focusing on the timing issue. I think that that's a -- Your Honor, as a matter of due process, because these key arguments came in, in the reply, I'm here to request a continuance. I'd like to rebut those arguments and I'd like to make an offer of proof as to what I would say in those additional papers.

THE COURT: How much time would you need?

1 MR. LANDAU: Not much at all, Your Honor.

2 THE COURT: How much time would you need?

3 MR. LANDAU: Just a few days.

4 THE COURT: Okay. Why don't you all come back here
on February 5th.

5 MR. LALLAS: May I respond to that argument, Your
6 Honor, before it's granted?

7 THE COURT: Sure.

8 MR. LALLAS: Thank you.

9 MR. LANDAU: Sure.

10 MR. LALLAS: Mr. Beitler's position is that a request
11 for a continuance to respond to these reply papers is
12 deliberately disingenuous, and the reason it's disingenuous,
13 Your Honor, is that all of the information that's contained in
14 the reply papers was within the knowledge of Mr. Bral when he
15 filed his opposition.

16 If you examine the content of our reply papers,
17 number one, we filed a very specific request for judicial
18 notice and we attached to it pleadings that have been filed in
19 Orange County Superior Court and Los Angeles County Superior
20 Court --

21 THE COURT: And, as you can tell, I saw those.

22 MR. LALLAS: Absolutely. And all of them were filed
23 by Mr. Bral. We filed -- we attached as part of our request
24 for judicial notice declarations, all of which were executed by
25 Mr. Bral. We filed a minute order relating to a successful

1 demur on a claim for breach of fiduciary duty for which Mr.
2 Bral opposed the demur and was present in court.
3

4 So, if we talk about the strictures of due process
5 which is notice and an opportunity to be heard, it is
6 disingenuous and we think misleading to suggest that Mr. Bral
7 didn't have any idea that any of these issues were going to be
8 raised.
9

10 THE COURT: I understand your point. You were going
11 to make an offer of proof.
12

13 MR. LANDAU: I was, Your Honor.
14

15 THE COURT: Let him make his offer of proof, and let
16 me hear what he's going to add.
17

18 MR. LALLAS: Thank you.
19

20 MR. LANDAU: Your Honor, if you'd kindly open Mr.
21 Lallas' reply brief to Page 3; that's the heart of the analysis
22 as to --
23

24 THE COURT: Hold on, one second. The reply
25 memorandum?
26

27 MR. LANDAU: Yes, Your Honor.
28

29 THE COURT: What page?
30

31 MR. LANDAU: Page 3, the supposed removal resolution
32 is invalid.
33

34 THE COURT: I'm sorry, where do you want to direct me
35 to on Page 3?
36

37 MR. LANDAU: This is my offer of proof as to what
38 will be forthcoming if we had a continuance, and that is that
39

1 this is the argument as to why the removal was invalid. The
2 first paragraph is a strawman argument relating to the fact
3 that there was no properly noticed meeting and properly noticed
4 vote with a quorum and such to result in the resolution of
5 removing Mr. Beitler. That's a strawman. We've never
6 contended that there was a meeting.

7 THE COURT: Okay. I knew that.

8 MR. LANDAU: It's the second paragraph which deals
9 with consent.

10 THE COURT: That starts with moreover?

11 MR. LANDAU: Correct. Was there an appropriate
12 consent. And then there's a new argument. The new argument --

13 THE COURT: I'm sorry, new argument?

14 MR. LANDAU: The new argument in the reply to which
15 I'd like --

16 THE COURT: All right.

17 MR. LANDAU: -- to have an opportunity to respond.
18 Starting in the second sentence, "Removal of Beitler as a
19 manager would be an amendment to the operating agreement which
20 defines a manager."

21 Well, that's a new argument. That's never come up in
22 anything in state court before, and that's an argument that's
23 very important because an amendment to the agreement requires
24 unanimous consent.

25 THE COURT: Yeah, I don't buy that. I don't think

1 that's a good argument.

2 MR. LANDAU: It's not an amendment --

3 THE COURT: I don't think that's a good argument.

4 MR. LANDAU: That would be what we would come with --

5 THE COURT: Okay. So you don't need to do that.

6 MR. LANDAU: Okay. And so if -- once we get past
7 that point and the removal of a manager is not an operating
8 agreement amendment, then it only requires a majority vote to
9 remove the manager. That's what the operating agreement says
10 which is consistent with California law.

11 We have the resolution which has a majority of
12 members voting in favor of removal. So the only question is,
13 is it a proper consent certificate which is referenced down
14 below in the last sentence --

15 THE COURT: No, the only other issue is really did it
16 happen.

17 MR. LANDAU: Correct.

18 THE COURT: And my concern and what goes to the heart
19 of the issue is that your papers after your allegedly -- your
20 client allegedly removed Mr. Beitler -- Beitler?

21 MR. LANDAU: Yes.

22 THE COURT: References in pleadings that he's still
23 the manager.

24 MR. LANDAU: I would like to address that, Your Honor
25 --

1 THE COURT: Well --

2 MR. LANDAU: -- in detail --

3 THE COURT: Well, you're making an offer of proof
4 here. Tell me how are you going to make an offer of proof that
5 your papers didn't say that.

6 MR. LANDAU: Because the issue in state court was
7 breach of fiduciary duty.

8 THE COURT: No. The papers specifically state that
9 Mr. Beitler is still the manager, one of the managers --

10 MR. LANDAU: It --

11 THE COURT: -- so how you are you -- what offer of
12 proof are you going to give me that those papers don't say
13 that? And that's the distinction. Your papers say it. How
14 are you going to tell me they don't?

15 MR. LANDAU: Again, Your Honor, those were papers
16 drafted for temporary restraining orders to stop the
17 foreclosure by lawyers and a client that were not focused on
18 the timing issue so they spoke broadly and that was --

19 THE COURT: So why wouldn't you be judicially
20 estopped?

21 MR. LANDAU: Different issues, different parties.
22 Think about it for a second, Your Honor. We have five other
23 members who signed the resolution --

24 THE COURT: Yes, but you have a declaration -- I
25 believe it's a declaration but more importantly, it's a

1 document signed by -- who was that pleading signed by? The
2 attorney.

3 MR. LANDAU: The pleading?

4 THE COURT: The pleading. The pleading that
5 references the fact that Mr. Beitler is still the manager.

6 MR. LANDAU: It was the Samini law firm. I don't
7 know the lawyer.

8 THE COURT: Okay. And I assume they do due diligence
9 before they file papers.

10 MR. LANDAU: I assume so.

11 THE COURT: Okay. All right. Well, what offer of
12 proof would you have that that was wrong? That the papers were
13 not wrong but that the papers were not submitted to the Court.

14 MR. LANDAU: I would submit to Your Honor that the
15 judicial admission to the extent that it's definite enough in
16 that proceeding would certainly not bind the other members that
17 signed the resolution that were not parties to that proceeding.

18 THE COURT: Yeah, but don't you think that I can
19 weigh the issue of whether or not your clients mean what they
20 say in state court proceedings when they're doing -- seeking
21 adverse actions against Mr. Beitler?

22 MR. LANDAU: Understood, but I think that you should
23 have the evidence of what was going on in there with the other
24 member's position that signed the resolution and then you can
25 weigh it against the judicial admission --

1 THE COURT: Well, I already have -- believe me.

2 That's how I developed my tentative is I weighed in.

3 MR. LANDAU: But you don't have an answer from my
4 side to those statements --

5 THE COURT: Well, sure I do. Now I do. You said it
6 was a scrivener's error or a mistake.

7 MR. LANDAU: And not made clearly though. Yes.

8 THE COURT: Okay. Now I understand. I understand
9 your point of view.

10 MR. LANDAU: And so, Your Honor, the ultimate issue
11 would then be does that judicial admission outweigh a
12 resolution that's properly adopted by a majority of the members
13 and then eviscerated as if it doesn't happen and what the
14 result --

15 THE COURT: Well, perhaps it didn't happen and it's
16 all backdated. I don't know the answer.

17 MR. LANDAU: I'd like a chance to rebut that, Your
18 Honor.

19 THE COURT: How could you do that?

20 MR. LANDAU: Declarations from all the members that
21 signed it.

22 THE COURT: Well, I assume that they're going to say
23 that they signed it when they did. Right?

24 MR. LANDAU: Yes.

25 THE COURT: I don't need anymore evidence. I believe

1 you that they will say that.

2 MR. LANDAU: Then I would submit, Your Honor, that it
3 wasn't backdated. There's no evidence of backdating. There's
4 no -- I mean --

5 THE COURT: Well, there is evidence of backdating and
6 the evidence is that your pleadings in state court reference
7 this gentleman as the member. You know, so there is evidence
8 that there is a problem.

9 MR. LANDAU: There's evidence of an inconsistency, I
10 would submit that.

11 THE COURT: Thank you.

12 MR. LANDAU: Does that bind the other members that
13 signed the resolution? It couldn't --

14 THE COURT: I don't think it has to bind. I think it
15 has to be weighed by me.

16 MR. LANDAU: Understood, Your Honor.

17 THE COURT: Well, I weighed it.

18 MR. LANDAU: Advancing to the relief that results
19 from a dismissal here, results in a Beitler or a Beitler
20 affiliate or some relationship with his handling on the entity
21 foreclosing to a loss of everyone else in the estate other than
22 Beitler, that's obviously weighty relief.

23 THE COURT: Well, I'm confused. Didn't you go in and
24 try to stop this in state court?

25 MR. LANDAU: Yes.

1 THE COURT: And what happened there?

2 MR. LANDAU: The proceeding was moved to Los Angeles
3 Superior Court --

4 THE COURT: I know that history. What happened as a
5 -- on the merits?

6 MR. LANDAU: Ultimately, the Judge decided that it's
7 a money issue and injunctive relief isn't necessary.

8 THE COURT: There you go. And so what do you get for
9 the Chapter 11 case? You get to pay \$1,700 and you get the
10 cheapest injunction in the world.

11 MR. LANDAU: Well, ultimately, my solution here as I
12 stated in the papers, this is a tenancy-in-common problem in
13 this case which by the way again --

14 THE COURT: It may be a tenancy problem in the state
15 court case that you have. Okay. Well, I've heard -- do you
16 have anymore offers of proof? Reason for a continuance.

17 MR. LANDAU: No, I appreciate Your Honor's
18 clarification. The key is that it would not require unanimous
19 approval and that the consent certificate was duly adopted
20 under the circumstances.

21 THE COURT: I appreciate that. Mr. Lallas.

22 MR. LANDAU: Thank you, Your Honor.

23 MR. LALLAS: Unless Your Honor is inclined to change
24 his tentative, I would --

25 THE COURT: I really want you to talk to the points.

1 MR. LALLAS: All right. Thank you, Your Honor.

2

3 THE COURT: So to answer yourself, yes, I am
4 inclined.

5 MR. LALLAS: If you'd turn to Page 5 of the reply.

6 THE COURT: Yes.

7 MR. LALLAS: Mr. Landau stood before you and said
8 that there was a timing error in the declaration and that Mr.
9 Bral was talking historically about whether Mr. Beitler was a
10 manager. At Page 5, Line 15, we point out that Mr. Bral signed
11 the declaration that stated Beitler is a member and co-manager
12 of Ocean View.

13 THE COURT: This is one of the reasons that in my
14 tentative by the way I weigh that the filing of the bankruptcy
15 was improper.

16 MR. LALLAS: Second, Your Honor, apropos that, at
17 Line 17 through 18, Mr. Bral in another declaration admitted
18 Beitler was and is a co-managing member of Ocean View.

19 THE COURT: And from that language, again, especially
20 because of the emphasis of "and is" in that riff of language
21 that's in that declaration, that's another determinative that I
22 utilized in saying that this bankruptcy was improperly filed.

23 MR. LALLAS: And, furthermore, Your Honor, at the
24 next two bullet points on the same page reflect that Mr. Bral
25 alleged that Mr. Beitler was breaching his fiduciary duties as

1 a manager of Ocean View.

2 THE COURT: And how can he breach his fiduciary
3 duties if he's not a manager?

4 THE COURT: So it is clear that Mr. Bral when it
5 suited his argument in the state court proceedings swore under
6 oath that Mr. Beitler was and is a co-manager of Ocean View.
7 So this is not an example of a scrivener's error by lawyer.
8 These are judicial admissions for which the Doctrine of
9 Judicial Estoppel would clearly be applicable.

10 Second, with respect to the argument about the
11 removal of Mr. Beitler, there's nothing in the operating
12 agreement that says that Mr. Beitler can be removed by a
13 majority vote, and in fact, we've cited in our analysis in both
14 -- in the reply papers that a unanimous vote would be required
15 to remove Mr. Beitler.

16 THE COURT: Please point that out in your reply.

17 MR. LALLAS: I'm sorry, Your Honor, in the reply at
18 Page 3 what we point out is that Mr. Beitler did not receive
19 the notice that was required under the operating agreement and
20 that's at Lines 15 through 24. The --

21 THE COURT: That's not what I'm asking for.

22 MR. LALLAS: -- the unanimous vote analysis in the
23 reply relates to an action outside the ordinary course of
24 business, and that goes to California Corporations Code Section
25 177 --

4 MR. LALLAS: A, yes, it applies to removal of a
5 manager and, B, it clearly applies to the filing of a
6 bankruptcy petition --

9 MR. LALLAS: Because -- thank you, Your Honor. And
10 we know under Avalon that the effect of the filing of the
11 bankruptcy petition is to create a whole new entity for which -
12 - which is the debtor-in-possession. And the result is that
13 before the members are going to consent to a transaction that
14 transforms the debtor pre-petition, they have to do so
15 unanimously under the operating agreement and applicable law.

16 So, when we look at the argument made by Mr. Landau
17 based on due process to be able to rebut the claims that are
18 asserted in the reply. We note that all of the claims that are
19 included in the reply were based on pleadings signed by Mr.
20 Bral, pleadings filed by Mr. Bral, facts known by Mr. Bral, and
21 facts concealed by Mr. Bral. The only person who was blind-
22 sided in this case was Mr. Beitler at the 341(a) hearing in
23 this matter when he learned out of the blue that Mr. Bral
24 claimed that there was a resolution that was executed that
25 removed him as a manager for which Mr. Beitler had never

1 received any notice, for which there was never a meeting that
2 was calendared, for which Mr. Beitler was never given an
3 opportunity either to sign the resolution or to object to the
4 resolution and for which Mr. Bral carefully concealed that fact
5 from three different courts when he applied for injunctive
6 relief twice in Orange County and then later in Los Angeles
7 County.

8 So, taking the totality of the circumstances in this
9 case, I think it's clear that not only was it incumbent upon
10 the Court to weigh the facts and information provided but the
11 Court has weighed the facts and information provided and
12 there's no basis for a continuance here to -- based on this
13 offer of proof where all of the documentary evidence is based
14 on what Mr. Bral has already told various different courts in
15 his unsuccessful attempt to obtain injunctive relief, and let's
16 really look at what the reality of this. This default on this
17 obligation was in May 2012. The notice of default was recorded
18 in November 2013 and Mr. Bral went to superior court in April,
19 in June, in September, and in October trying to obtain
20 injunctive relief and when he couldn't and when all of these
21 issues which he asserted which are the same issues that are the
22 subject matter of his opposition were rejected, he filed a
23 bankruptcy petition without authorization moments before the
24 foreclosure sale was set to occur. So, frankly, Your Honor --

25 THE COURT: Okay. Thank you very much.

1 MR. LALLAS: -- I request that the Court adopt the
2 tentative ruling and in addition that in the order of the Court
3 adopting the tentative ruling that the bankruptcy be dismissed
4 effective as of and the stay be vacated effective as of the
5 moment and date it was filed and that the Court impose a
6 customary prohibition of 180 days for the refiling of any
7 bankruptcy by this debtor because this was not a bankruptcy
8 filed in good faith.

11 MR. LANDAU: I would, Your Honor.

17 So, if you would like to talk about the merits for
18 three or four minutes, that would be fine. I have read
19 everything several times.

20 MR. LANDAU: Understood, Your Honor. The one issue I
21 would brief to you which seems to be to key and at the heart of
22 the inconsistency and the judicial estoppel is judicial
23 estoppel --

1 not what I'm utilizing.

2 MR. LANDAU: Okay.

3 THE COURT: So, if you want to do an appeal, make
4 sure it's clear or I will that I'm not utilizing judicial
5 estoppel for my determination.

6 MR. LANDAU: Okay. Being able to read the tea leaves
7 and seeing where this hearing is going, I'd like to address the
8 two little add-ons that were just added onto the end of the
9 request that were not in the papers, not requested in the
10 papers --

11 THE COURT: Oh, you don't need to worry. I'm not
12 going to do 180-day bar because it wasn't asked for and -- what
13 was the other one?

14 MR. LANDAU: Retroactive --

15 THE COURT: No, here's what happens. The law is
16 going to guide what happens with respect to a dismissal. The
17 law of the Ninth Circuit.

18 MR. LANDAU: Thank you.

19 THE COURT: And that's all that's going to happen.
20 If they happen to violate the automatic stay during the
21 pendency of this case, that's another issue for another day.

22 MR. LANDAU: Very good.

23 THE COURT: Thank you.

24 MR. LANDAU: Your Honor, thank you for the time.

25 THE COURT: All right. So, first of all, the oral

1 motion for a continuance is denied. The tentative as I have
2 now read it into the record stands and the bases for that are
3 the points that are made in the reply but I found them on my
4 own. And the fact is that Mr. Bral on several occasions swore
5 under penalty of perjury that Mr. Beitler is a member and co-
6 manager even after the time he believed he says now that there
7 was a resolution or some other mechanism to remove Mr. Beitler
8 as a member, and those are set out in the reply brief.

9 So, for all of those reasons, Mr. Lallas, would you
10 please prepare an order granting your motion --

11 MS. LAWSON: Your Honor --

12 THE COURT: Oh, Ms. Lawson. I know you want a
13 judgment.

14 MS. LAWSON: Yes, I do.

15 THE COURT: How much judgment do you want?

16 MS. LAWSON: Six hundred fifty dollars. Three
17 hundred --

18 THE COURT: Yes, you may include that into the order.

19 MS. LAWSON: Three hundred twenty-five dollars for
20 the fourth quarter of 2014 and 325 for the first quarter of
21 2015.

22 THE COURT: That would be acceptable. Do you have
23 that judgment? Do you have to have an independent judgment?

24 MS. LAWSON: The order dismissing the case should
25 carry the -- should contain the language.

1 THE COURT: Mr. Lallas, would you be please so kind
2 as to confer with Ms. Lawson after the hearing to get the
3 precise numbers?

4 MR. LALLAS: It would be a pleasure, Your Honor.

5 THE COURT: Okay. And do not --

6 MS. LAWSON: Thank you.

10 MR. LALLAS: I understand, Your Honor.

11 THE COURT: Thank you very much.

12 MR. LALLAS: Thank you, Your Honor.

13 MR. LANDAU: Thank you, Your Honor.

14 (Concluded at 12:43 p.m.)

15 | Page

* * * * *

1
2 C E R T I F I C A T I O N
3

4 I certify that the foregoing is a correct transcript
5 from the electronic sound recording of the proceedings in the
6 above-entitled matter.
7

8 Kathleen M. Price
9

Kathleen M. Price, AAERT Cert. No. 325

2/25/15

Date

10 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:
11

12 Kathleen M. Price
13

Kathleen M. Price, AAERT Cert. No. 325
AD HOC TRANSCRIPTION, LLC

EXHIBIT “C”

9 HEARING RE: ORDER TO SHOW
10 CAUSE WHY THE ABOVE-
CAPTIONED CASE SHOULD NOT
BE DISMISSED WITH 180-DAY
BAR FOR BAD FAITH

12 TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SCOTT CLARKSON
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

15 For the Petitioning PAUL A. BECK, ESQ.
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17 Court Recorder: Tamika Law
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19 Central District of California
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Page 2

1 SANTA ANA, CALIFORNIA, THURSDAY, FEBRUARY 12, 2015

2 10:14 A.M.

3 | --o0o--

4 THE COURT: #6.10, Ocean View Medical Investors,
5 LLC. This is a hearing on a court-ordered *sua sponte*
6 request to show cause why the above-captioned case should
7 not be dismissed with 180-day bar for bad faith. One
8 second, please.

9 || (Pause)

10 Appearances, please.

11 MR. BECK: Good morning, Your Honor. Paul Beck,
12 B-E-C-K; my law firm on behalf of the petitioning
13 creditors who are present in court. I'm prepared to
14 introduce them to the Court and would also tell the Court
15 that we have a fourth creditor present who is prepared to
16 be a petitioning creditor to join the petition and I'm
17 happy to introduce them to the Court if the Court would
18 like.

19 THE COURT: Well, is Nuray DePriest here?

20 MR. BECK: She is, Your Honor. Ms. DePriest,
21 would you --

22 THE COURT: She's waved her hand. Doctor -- is
23 it Nghiem?

24 MR. BECK: If you're talking about petitioning
25 creditor Elizabeth Nghiem, she's in surgery this morning.

Page

3

1 She's a surgeon. Her brother Robert Nghiem is here and he
2 has a power of attorney to be here on her behalf this
3 morning.

4 THE COURT: Okay. And Ms. Lora and you wanted to
5 introduce me to a fourth person.

6 MR. BECK: Yes, Your Honor. That would be
7 Richard or Rick Martin, who is with an architectural
8 services firm. Mr. Martin is present and --

9 THE COURT: Very good.

10 MR. BECK: I have a copy of the proof of claim
11 that was filed in the prior Chapter 11 case and from each
12 of the petitioning creditors and Mr. Martin's firm I have
13 evidence of their loans or services or other documentation
14 that bears out their status as non-contingent, undisputed,
15 unsecured creditors of the debtor -- the alleged debtor in
16 this case, Ocean View Medical Investors, LLC.

17 THE COURT: Thank you very much.

18 MR. BECK: You're welcome, Your Honor. And
19 again, I'm prepared obviously to show the Court these
20 documents. They are originals. I do not have extra copies
21 for the Court, but I'm happy to show them to the Court and
22 provide them to the Court any way the Court likes.

23 THE COURT: Thank you very much. Why don't you
24 have a seat?

25 I appreciate the petitioning creditors being here

Page

4

1 today and I appreciate your -- I'm sorry, I didn't catch
2 your name, sir.

3 MR. MARTIN: Richard Martin.

4 THE COURT: Mr. Martin, I appreciate you being
5 here, too.

6 We need to discuss something. I think my
7 personal record of seeing creditors being sanctioned for
8 filing bad faith involuntary bankruptcy petitions with
9 \$150,000 each, I think that's my personal record of
10 watching unsecured creditors get involved in things like
11 this. Usually, they're only about \$10,000 each for
12 sanctions and fines for filing these things. And most of
13 the folks that get sanctioned get sanctioned a lower
14 amount, \$5,000, \$10,000, because they just didn't get told
15 a lot about the case. They've said they got called up
16 usually and they said, oh, we need your help real quick, we
17 need you to do something, and they don't have a picture of
18 the totality of the circumstances.

19 This is federal court. This isn't People's Court
20 that you see on television. This isn't Divorce Court on
21 television. It's a United States Federal Bankruptcy Court
22 and it's a very serious business and millions of dollars
23 are at stake.

24 It may appear odd at first glance to raise the
25 subject of bad faith in connection with involuntary

Page

5

1 petitions which, after all, are filed by creditors. There
2 are court-imposed requirements of debtor good faith when a
3 voluntary petition is filed and creditor good faith when an
4 involuntary petition is filed.

5 If a debtor acts in a manner to promote an
6 involuntary bankruptcy simply to forestall a foreclosure or
7 for some other reason that involuntary bankruptcy should be
8 carefully scrutinized, we typically call it creditor
9 collusion -- collusion with the debtor or with the
10 principal of a debtor. Most people who operate businesses
11 never involve themselves in things like this.

12 So I would like to call to the witness stand to
13 be sworn Ms. Lora. Please come up. You don't need to
14 stand. Ms. Lora, would you please -- we're going to swear
15 you in under oath and that -- well, we'll talk about that
16 in a minute. Would you please swear her in?

17 COURT RECORDER: Please raise your right hand and
18 be sworn.

19 SUSAN LORA, SWORN

20 THE COURT: You have to speak up.

21 THE WITNESS: Yes.

22 COURT RECORDER: Please state your name for the
23 record and spell your last name.

24 THE WITNESS: Susan Lora.

25 THE COURT: And what is your address, your

Page

6

1 business address?

2 THE WITNESS: I work on the (indiscernible) right
3 now.

4 THE COURT: Is that where you get your mail?

5 THE WITNESS: No, it's at my house, at 2555 Main
6 Street, Apartment 2050, Woodland, California 92614.

7 THE COURT: Please be seated. I have some
8 questions for you.

9 EXAMINATION

10 BY THE COURT:

11 Q. You have sworn on this document that you're owed
12 \$40,000.

13 A. Yes.

14 Q. And how did you become a creditor to this
15 company?

16 A. Well, this is my life savings. They owe us
17 (indiscernible), so I know Joe and he (indiscernible) --

18 Q. I'm sorry. You have to slow down and speak
19 clearly and use first and last names. I don't know who
20 you're talking about when you say "I know Joe."

21 A. Oh, okay. My name is Susan Lora.

22 Q. I'm sorry?

23 A. My name is Susan Lora.

24 Q. Yes, your name is Susan Lora.

25 A. Okay. Yes. And they need to finish Ocean

Page	7
1	View --
2	Q. Who do you know at Ocean View?
3	A. Joe Bral.
4	Q. Say it again.
5	A. Joe Bral, J-O-N-G, Brown.
6	Q. J-O --
7	A. N -- sorry.
8	Q. N.
9	A. J-O-H-N. John.
10	Q. You mean John?
11	A. John.
12	Q. What's --
13	A. Bral.
14	Q. And what's his last name?
15	A. Bral, B like boy, R-A, like apple, L.
16	Q. Bral.
17	A. Yes.
18	Q. And did you loan John Bral some money?
19	A. I borrowed to Ocean View Medical.
20	Q. Did you invest?
21	A. I lend them money to finish some (indiscernible).
22	Q. And when did you lend it?
23	A. In March 2012 and December 2012.
24	Q. And who asked you for that money?
25	A. Excuse me?

Page

8

1 Q. Who asked you for that money?

2 A. John.

3 Q. John?

4 A. Bral.

5 Q. Bral. And he gave you a note?

6 A. He gave me a notice promise.

7 Q. And promissory note?

8 A. Yes.

9 Q. And I understand from Mr. Beck that he has a copy
10 of that?

11 A. Yes, it's original.

12 MR. BECK: I actually have the originals.

13 THE COURT: Could I just see it? I don't want
14 to --

15 MR. BECK: Absolutely. May I approach, Your
16 Honor?

17 THE COURT: -- admit into evidence. No, I want
18 to see it. You can just bring it right up.

19 MR. BECK: Thank you, Your Honor.

20 THE COURT: It's good procedure, but we're
21 informal today.

22 MR. BECK: I have (indiscernible -- away from
23 microphone) documentation for (indiscernible) similar
24 (indiscernible) as well.

25 THE COURT: Thank you. And I'll just leave it

Page

9

1 right here for now.

2 MR. BECK: Very good, Your Honor.

3 BY THE COURT:

4 Q. In the last five days -- in the last five days or
5 seven days who has contacted you about this bankruptcy?

6 A. I was back and forth with Nuray --

7 Q. No, I'm sorry. Listen to me again. Who called
8 you?

9 A. Nuray.

10 Q. Who?

11 A. Nuray.

12 MR. BECK: Your Honor, she's referring to
13 Ms. DePriest.

14 THE COURT: N-U-R-A-Y, DePriest.

15 THE WITNESS: Yes.

16 MR. BECK: That's correct.

17 THE COURT: All right.

18 BY THE COURT:

19 Q. And she called you?

20 A. Right.

21 Q. And what did she tell you?

22 A. That -- we know that it was (indiscernible) --

23 Q. I'm sorry?

24 A. They told me that the pay was dismissed.

25 Q. I'm sorry? I can't understand you.

Page

10

1 A. They told -- she told me that the case was
2 dismissed.

3 Q. A case was dismissed.

4 A. And we have to do something more than to get our
5 money back. She proposed me, you know, to send a letter to
6 you -- to the Court and I signed the letter on Sunday and
7 she just present them to you.

8 Q. Okay. What letter?

9 A. For -- I said our petition to reopen the case or
10 something, you know, like that.

11 Q. Did she tell you why the case was dismissed?

12 A. What action -- yeah, that there was a
13 technicality. I -- to be honest with you, honest, I don't
14 understand too much --

15 Q. No, I want you to tell me exactly what she told
16 you.

17 A. Oh, there was meeting for some technicality
18 problem they dismissed. We don't understand why actually
19 really why they did that because we are real people --

20 Q. I dismissed the case.

21 A. Oh, okay. Because we really are -- we are people
22 that we really claim the money because we have faith in
23 them.

24 Q. But what did she tell you?

25 A. That we have to -- we need to file this, you

Page 11

1 know, and try to get our money back because this is real --
2 this is fir -- this is honest that we did. We really --

3 Q. And so you signed this document after she told
4 you you needed -- that you needed to do something to get
5 your money back?

6 A. We need to do something.

7 THE COURT: Thank you very much. You may sit
8 down.

9 (Witness excused.)

10 Let's talk to Ms. DePriest. You need to be
11 sworn, Ms. DePriest.

12 MS. DEPRIEST: Sure.

13 COURT RECORDER: Please raise your right hand to
14 be sworn.

15 NURAY DEPRIEST, SWORN

16 COURT RECORDER: Please state your name for the
17 record and spell your last name.

18 THE WITNESS: Nuray DePriest, D-E-P-R-I-E-S-T.

19 THE COURT: And what is your address?

20 THE WITNESS: 5151 Walnut Avenue, #25, Irvine,
21 92604.

22 THE COURT: Please be seated.

23 EXAMINATION

24 BY THE COURT:

25 Q. Well, you were in court when you heard Ms. Lora

Page 12

1 say that you called her.

2 A. Yes.

3 Q. Is that true?

4 A. Yes, it is true.

5 Q. And when did you call her?

6 A. I -- you know, we --

7 Q. Excuse me. When did you call her?

8 A. We actually started discussing this a couple of
9 weeks ago.

10 Q. A couple of weeks ago?

11 A. Yes.

12 Q. Why would you talk about an involuntary petition
13 a couple of weeks ago?

14 A. Because when we were -- you know, when I knew
15 that this was going into bankruptcy case, I start -- by the
16 way, I am a banker to both Barry Bettler and John Bral for
17 five years.

18 Q. I'm sorry, you're a what?

19 A. Banker.

20 Q. A banker?

21 A. Yes.

22 Q. You're a banker?

23 A. So --

24 Q. What kind of a banker --

25 A. -- I know both of them.

Page

13

1 Q. -- are you?

2 A. When I met them in 2008/2009 I was working for
3 Citizens Business Bank. I'm a relationship manager. I now
4 work for Bank of the West.

5 Q. You work for Bank of the West?

6 A. Yes. So I met them together and, you know, I
7 know both of them really well. When I knew that it's going
8 to go in --

9 Q. Excuse me. Let's try it again. I ask a question
10 and you answer it.

11 A. Okay.

12 Q. So let's try it again. When did you first talk
13 to Ms. Lora about this involuntary bankruptcy petition?

14 A. When I realize that the case was dismissed --

15 THE COURT: Mr. Beck, she's your client.

16 MR. BECK: Yes, Your Honor.

17 THE COURT: All right. I'm encouraging you to
18 have her answer the question.

19 Let's try it one more time. You need to
20 carefully listen -- no.

21 Ask her the same question. Maybe she'll feel
22 better about it.

23 MR. BECK: Very good, Your Honor.

24 EXAMINATION

25 BY MR. BECK:

Page 14

1 Q. Ms. DePriest, can you fix the time and tell the
2 Court the time, the date approximately when you spoke to
3 Ms. Lora about filing an involuntary petition against Ocean
4 View?

5 A. I want to say I know Susan for a long time, so
6 couple of days ago. I filed this on Monday. I had the
7 paperwork before in my hand because I was very worried that
8 the bankruptcy case may not go through.

9 THE COURT: Where did you get the involuntary
10 petition?

11 THE WITNESS: I bank a couple of attorneys and I
12 bank legal -- lots of this legal assistance society --
13 Legal Aid Society of Orange County, so I went to federal
14 court. I went into the bankruptcy. I find the papers. I
15 ask my clients and they also told me where to find, what to
16 find.

17 THE COURT: Now, you're under oath.

18 THE WITNESS: Yes.

19 THE COURT: I'm going to ask you a very important
20 question and I want to remind you that you're under oath,
21 under penalty of perjury.

22 THE WITNESS: Right.

23 THE COURT: You can go to jail for not telling
24 the truth.

25 THE WITNESS: Right.

Page

15

1 THE COURT: Listen to me carefully.

2 THE WITNESS: Right.

3 BY THE COURT:

4 Q. When did you first talk to an attorney for the
5 debtor?

6 A. The attorney, you mean --

7 Q. The attorney for the debtor, Mr. Landau, or
8 anyone else? When did you find out that the case had been
9 dismissed?

10 A. I find out that the case was dismissed from John.
11 John Bral.

12 Q. John --

13 A. Bral.

14 Q. John Bral?

15 A. Yes.

16 Q. B-R-A-L?

17 A. And I find out -- yes.

18 Q. When did you find out that --

19 A. On Friday.

20 Q. You found -- and did he call you or did you call
21 him?

22 A. I called him.

23 Q. Why did you call him?

24 A. Because I was worried about us not getting -- me
25 personal not getting my money back.

Page 16

1 Q. And so you -- he called -- you called him. What
2 did he say?

3 A. He says that unfortunately the case is dismissed.

4 Q. And what did you tell him?

5 A. I just -- I freaked out.

6 Q. What did you tell him?

7 A. I didn't tell him anything. He says, "I'm very
8 sorry; the case is dismissed." And after that I start -- I
9 know Robert. I know Susan.

10 Q. What did you tell him?

11 A. I didn't tell him anything. I said --

12 Q. Did you say, "I'm going to file an involuntary
13 petition"?

14 A. Not to him.

15 Q. Who did you tell it to?

16 A. I talked to Susan and I talked to Robert.

17 Q. You didn't tell John Bral that you were going to
18 file the involuntary petition?

19 A. No.

20 Q. Really?

21 A. No. No, I told him that I just have to do
22 something about it.

23 Q. Did you tell him that you were going to file the
24 involuntary petition?

25 A. No.

Page

17

1 Q. Did you tell his attorney?

2 A. I don't know John's attorney.

3 Q. Did you tell -- did he tell you where to get the
4 forms?

5 A. No. No, no. But as I said, it's pretty simple
6 to find --

7 Q. I know how to find them.

8 A. I know. Well, it took me some time to find it.
9 I find it. And it --

10 Q. So you talked to no one else about this
11 involuntary petition? You are the organizer?

12 A. I am the organizer.

13 Q. And so you went to some friends and the website
14 and picked up the involuntary petition and filled it out?

15 A. Yes, that's exactly how I did.

16 Q. And who typed it up?

17 A. I typed it up.

18 Q. Now, when did you call Ms. Lora?

19 A. I called -- I met Susan on Sunday, Sunday
20 afternoon, to have her sign the papers.

21 Q. Did you tell her that the case had been
22 dismissed?

23 A. Yes.

24 Q. And did you -- why did you believe that the
25 case -- the involuntary case needed to be refiled -- or

Page

18

1 needed to be filed?

2 A. I wasn't 100 percent sure but, as I said, I have
3 some clients who are in the both sides of the fences. I
4 mean, I did a lot of --

5 Q. No, I'm sorry --

6 A. -- calls --

7 Q. -- it's a very simple question. Why do you think
8 you needed to file this?

9 A. Because I feel like we need to save our monies
10 and I don't know what else to do. I just -- you know, the
11 case is dismissed. I know -- I didn't really realize that
12 the case will be dismissed knowing that, you know, so many
13 people are waiting for their money. When it was dismissed
14 on Friday, I just -- you know, this is my \$75,000. I don't
15 have it laying around.

16 Q. I'm sorry, \$5,000?

17 A. \$75,000. So I needed to have the money back and
18 I just -- I really didn't know what to do, how to do. I
19 just find out about this form, complete it, and called the
20 two people that I knew before, and I know them for a really
21 long time and we just --

22 Q. And who else did you call?

23 A. I just filed. I called Robert.

24 Q. Robert?

25 A. Yes.

Page

19

1 Q. And he didn't sign this?

2 A. No, it is (indiscernible). I was a banker for
3 Robert and it was (indiscernible) when they were buying
4 (phonetic) Ocean Medical, the third floor. I work under
5 loans. We didn't do it; Wells Fargo did, but that's how I
6 met them, so I know both of them for like, I don't know,
7 three years.

8 Q. So you didn't talk to Mr. Bral about filing an
9 involuntary bankruptcy?

10 A. Who?

11 Q. Mr. Bral.

12 A. No, no. I told him, "I need to do something,"
13 but --

14 Q. And what did he say?

15 A. He said, "You've got to do what you've got to do.
16 I cannot help."

17 Q. And what does he mean by that?

18 A. He says, "I cannot help you."

19 Q. Why couldn't he?

20 A. I don't know. I just -- I was so pissed.

21 Q. He said that, he said, "I can't help you"?

22 A. He said, yeah, "There is nothing I can do. This
23 has been dismissed."

24 Q. He didn't say you need to file an involuntary
25 bankruptcy?

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1 A. No, no. I'm pretty sure he maybe know that I
2 will do something. I'm just not going to sit and wait but,
3 no, he was upset; I was upset.

4 THE COURT: Thank you. You may step down.

5 (Witness excused.)

6 You may take this back, Mr. Beck.

7 MR. BECK: Thank you.

8 (Pause)

9 THE COURT: Mr. Beck, when is the foreclosure
10 sale scheduled?

11 MR. BECK: I don't know, Your Honor. I'd have to
12 consult to see if my -- my clients know, but I don't have
13 that information at present.

14 THE COURT: Why don't you consult them?

15 (Pause)

16 MR. BECK: Your Honor, unfortunately my clients
17 don't have that information either. I don't -- I don't
18 know. I could find out, but I don't have that information.

19 THE COURT: Is it soon?

20 MR. BECK: Unfortunately, Your Honor, my
21 knowledge of the case is -- goes back less than 24 hours
22 and I unfortunately don't have that information.

23 THE COURT: And --

24 MR. BECK: I certainly can report back to the
25 Court.

Page

21

1 THE COURT: No, thanks. There's no single test
2 for determining whether an involuntary petition should be
3 dismissed as having been filed in bad faith. Bad faith
4 very much depends on facts in each case. I'll cite for you
5 the case of *In Re: Mi La Sul*, M-I L-A S-U-L, 380 B.R.
6 546, Bankruptcy Central District of California, Judge Mund,
7 2007.

8 "Dismissal of an involuntary petition as having
9 been filed in bad faith is justified anytime that
10 petitioning creditors use involuntary petitions to
11 gain advantage of a particular creditor's position.
12 There's a presumption of good faith by petitioning
13 creditor in filing an involuntary petition, but that
14 presumption can be overcome based on the totality of
15 the circumstances."

16 Ocean View Medical Investors, LLC, in case number
17 8:14-18 -- pardon me -- 16860 was pending last week and the
18 motion of managing member Barry Bichler (phonetic) to
19 dismiss the bankruptcy for lack of authorization came on
20 for hearing before this Court at that time on January 29,
21 2000 -- excuse me, hold one second. I guess it came on for
22 hearing on January 29, 2015, and an order dismissing the
23 case was February 6, 2015.

24 Say it right now the Court does not believe the
25 testimony that has just been given. I find it

Page 22

1 untrustworthy and I find it inconceivable that Mr. Bral did
2 not tell you about the possibility of an involuntary
3 bankruptcy. I think the totality of the circumstances
4 warrants that this case be dismissed as bad faith with
5 respect to the creditors. I just -- again I'll repeat it.
6 I don't believe the testimony that I've heard. I do not
7 believe that Mr. Bral would have just closed his mouth and
8 told you that, oh, well, I can't talk to you about this, I
9 can't tell you. I don't believe it.

10 For that reason, I am dismissing this case with a
11 180-day bar against the filing of an involuntary petition
12 against Ocean View Medical Investors, LLC, and for any
13 other activity with respect to the property for 180 days,
14 and that is the order of this Court today. Thank you, Mr.
15 Beck?

16 MR. BECK: Your Honor, may I address the Court?

17 THE COURT: No, sir. You can address the Court,
18 sure, but that's my findings.

19 MR. BECK: Okay. Just for the record, Your
20 Honor, there are a handful of other unsecured creditors in
21 the case besides the four creditors who are here today.
22 And I believe, Your Honor, that these are all -- I believe
23 that they are all legitimate creditors.

24 THE COURT: And I believe that they may be, but I
25 believe that there's been collusion in this particular

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23

1 petition.

2 MR. BECK: I understand.

3 THE COURT: I believe there's collusion. Your --
4 Mr. Beck, you and I have known each other a long time. You
5 and I have been involved in the bankruptcy business a long,
6 long time. I know in my heart you didn't believe her
7 either. They don't -- it doesn't work that way. I have no
8 doubt that the debtors or the debtors' principals who
9 wanted this case to continue went out and solicited. And
10 how I divined that it was inaccurate testimony is because
11 of the substance of the testimony when she was so clear
12 that, oh, he said nothing. She was so clear in trying to
13 create a record that Mr. Bral told her nothing about the
14 involuntary petition. That's what was so unbelievable
15 about her testimony.

16 I know that it doesn't work that way and I'm
17 using my experience. And you are a very experienced
18 counsel, too. And I don't need you to respond to my
19 assertion of what you believe because, again, I can't speak
20 for you, but that's my experience. And I'm telling you
21 right now that this case strikes me in the totality of the
22 circumstances, this involuntary as a setup job that was
23 used as -- and it was collusive between the principals of
24 Ocean View Medical Investors, LLC, who want the protection
25 of an involuntary bankruptcy because their original

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1 bankruptcy could not be -- could not go forward because
2 they had actually not told the truth to this Court earlier
3 about the dismissal of Mr. Bichler or Brightler. I guess
4 it was Bichler.

5 MR. BECK: I think it's Bichler, Your Honor.

6 THE COURT: Bichler. You see, there's history
7 that these creditors don't understand in this case and
8 you've only been involved after 24 hours, but you need
9 to -- if you want to, you should go back and listen [sic]
10 to the transcript of the January 29 hearing when you saw --
11 when it was demonstrated that Mr. Bral had perhaps
12 fabricated documents to demonstrate that Mr. Bichler had
13 been removed and in legal pleadings after that -- or pardon
14 me, he created that document after the fact because in
15 legal documents that occurred after the dated dismissal of
16 Mr. Bichler, they tell the state courts that he was already
17 still the managing member. And they swore to it under
18 penalty of perjury in state court actions to try to get
19 receivers.

20 Go to state court and work on getting an
21 injunction perhaps in this situation, but don't use the
22 Bankruptcy Court to get a free, cheap involuntary
23 bankruptcy automatic stay. That's what this Court is
24 talking about. I'm not fining anybody today for what
25 they've done. I think they've probably been pawns in this

Page 25

1 fight that's between Mr. Bichler and Mr. Bral. I don't
2 blame you, but the fact is that you've been used and that's
3 what has to happen here.

4 I'm not going to use the Bankruptcy Court system
5 for this type of structure. Go to state court if you want
6 to get an injunction. I will remind you that they've
7 already tried in state court several times and that's when
8 they -- from this Court's view the perceived perjury
9 occurred in state court pleadings or alternatively they
10 purged themselves -- or perjured themselves here when they
11 told me that Mr. Bichler had been removed. Go back and
12 read those files if you'd like, if you have the time or
13 energy or desire.

14 That's what's going on here. And I know you
15 don't know a lot about this. Don't get too deep into the
16 weeds on this case unless we really want to drill down on
17 some problems of perjury and other issues.

18 MR. BECK: Your Honor, thank you for explaining
19 the Court's thinking and for your comments. My concern as
20 a lawyer who represents both creditors and debtors and
21 trustees and all kinds of insolvency matters in Chapter 11
22 and Chapter 7 throughout the District, is for the unsecured
23 creditors in the case. There are about two and a half-
24 million dollars of debt to unsecured creditors. Before --

25 THE COURT: Do you know what the debt structure

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1 of this case is because I do. Do you know what -- you're
2 making the argument that there are unsecured creditors who
3 could get paid in this case. Do you understand the debt
4 structure of this case?

5 MR. BECK: In a very simplistic manner, Your
6 Honor, based on my review of a couple documents.

7 THE COURT: Okay. Good.

8 MR. BECK: I have not had the opportunity to --

9 THE COURT: Have you seen, for instance, the
10 schedules of Ocean View?

11 MR. BECK: I have.

12 THE COURT: Okay. And so you understand the
13 position of the unsecured creditors at this point?

14 MR. BECK: I do. And here's my quick
15 perspective, Your Honor, and I appreciate the Court giving
16 me the opportunity to explain it from my perspective. The
17 property appears to be worth -- or capable of producing a
18 sale price in the neighborhood of seven to seven and a
19 half-million dollars.

20 THE COURT: Then they should go out and get a
21 buyer and buy it.

22 MR. BECK: I think that in order to get to a
23 point where they could sell it, as I understand it, they
24 have to be able to report a subdivision map because there
25 are three condominium floors. That's going to take three

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1 or four months.

2 I assume that that period of time is far longer
3 than any secured creditor would wait to take action by way
4 of foreclosure or anything else.

5 THE COURT: Well, do you know how long the
6 secured creditor has been waiting?

7 MR. BECK: I do not, Your Honor.

8 THE COURT: Okay.

9 MR. BECK: In truth, I'm not going to tell the
10 Court anything I don't know.

11 My concern is about the petitioning creditors and
12 the other unsecured creditors. And my offer to the Court,
13 for the record, would be that if I had another ten days or
14 a week or whatever I believe I could get -- I believe other
15 creditors would seek to join a petition.

16 THE COURT: That's not the -- you're missing the
17 point. You can have 1,000 unsecured creditors here today
18 signing a petition. It was generated by -- it was
19 generated on the fly and it -- from all the evidence I
20 have, including the testimony and appreciating the
21 testimony that I've heard, it strikes me that this is a
22 collusive and voluntary bankruptcy. And it's interesting
23 and I want to make it perfectly clear on the record that
24 it's sort of like the Sherlock Holmes matter where the dog
25 that didn't bark. I don't know if you know my reference.

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1 MR. BECK: I can gather from it, Your Honor. I
2 don't --

3 THE COURT: It's Mr. Nelson --

4 MR. BECK: Mr. Martin.

5 MR. MARTIN: Martin.

6 THE COURT: Martin knows what I'm talking about.
7 It's the dog that didn't bark in that testimony that I
8 heard.

9 Those phone calls don't work that way. They
10 never work that way. They say, "Look, I need some help.
11 We've got to work on this now. You've got to find me three
12 other creditors or two other creditors and we've got to put
13 this in voluntary petition together really quickly." And
14 had that been the testimony there would have been different
15 circumstances to evaluate, but the fact is that because of
16 the crystal clarity of her testimony, that was why it was
17 so unbelievable and that's what I'm -- I'm using my
18 judicial determination on.

19 So my ruling stands. I appreciate your comment.
20 Thank you very much. We'll prepare an order. This case is
21 dismissed --

22 MR. BECK: Very well.

23 THE COURT: -- with an 880-day [sic] bar.

24 MR. BECK: 800 -- I think --

25 THE COURT: One hundred and eighty-day bar.

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1 MR. BECK: Right.

2 THE COURT: Thank you.

3 MR. BECK: Thank you.

4 THE COURT: Court is in recess.

5 (End at 10:48 a.m.)

6 * * * * *

7 I certify that the foregoing is a correct
8 transcript from the electronic sound recording of the
9 proceedings in the above-entitled matter.

10

11

12 _____ Date: February 20, 2015

13 RUTH ANN HAGER, C.E.T.**D-641

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EXHIBIT “D”

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FILED & ENTERED

FEB 12 2015

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY nbolte DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – Santa Ana Division

In re
Ocean View Medical Investors LLC,
Debtor.

Case No. 8:15-bk-10624-SC

Chapter 7

**ORDER DISMISSING INVOLUNTARY
CHAPTER 7 CASE AND IMPOSING A
180-DAY BAR TO REFILING**

Date: February 12, 2015
Time: 10:00 a.m.
Courtroom 5C

An involuntary Chapter 7 was filed against Alleged Debtor, Ocean View Medical Investors, LLC (“Ocean View Medical”), on February 9, 2015, by petitioning creditors, Nuray DePriest, Elizabeth Nghiem, and Susan Lora. The Court issued an Order to Show Cause Why Case Should Not Be Dismissed With a 180-Day Bar on 2/9/15 [Dk. 2] (“OSC”). The OSC specifically stated that “[a]ll petitioning creditors and their counsels are required to appear at the OSC.” [Dk. 2, lines 18-19]. A hearing on the OSC was held on February 12, 2015 at 10:00 a.m. in Courtroom 5C of the United States Bankruptcy Court, 411 West Fourth Street, Santa Ana, CA 92701. Petitioning creditors,

1 Nuray DePriest and Susan Lora appeared. Petitioning creditor Susan Lora did not
2 appear.¹ Charles Beck, Esq., appeared on behalf of all petitioning creditors.

3 The Court issued the OSC in light of (1) the proximity of the filing of the
4 involuntary petition, on Monday, February 9, 2015, to the dismissal of Ocean View
5 Medical's prior Chapter 11 filing, Case No. 8:14-bk-16860, on the previous Friday,
6 February 6, 2015 (order entered 2/6/15 [Dk. 43]); and (2) the several allegations of bad
7 faith, forum shopping, and perjury asserted in connection with the motion to dismiss in
8 the prior Chapter 11 proceeding.

9 A. Testimony at the OSC

10 The Court took testimony from both Ms. Lora and Ms. DePriest. Ms. Lora
11 testified that Ms. DePriest called her and told her that the case was dismissed, that they
12 needed to get their money back and asked her if she would sign the involuntary petition.

13 Ms. DePriest testified that she spoke to John Bral on Friday (*i.e.*, February 6,
14 2015), who confirmed that the case had been dismissed and told her she needed to do
15 whatever she thought was right. Ms. DePriest further testified that she was a banker,
16 that she asked her clients where to get the involuntary petition forms, that she obtained
17 the involuntary forms herself, and that she filed them herself, with no help from Mr. Bral
18 or Mr. Bral's attorney. However, Ms. DePriest also testified that she had been
19 considering an involuntary proceeding for "several weeks."

20 The Court notes that Ms. DePriest was evasive and non-responsive to several of
21 the Court's questions, including the questions about why she had been considering an
22 involuntary for "several weeks." During her testimony, the Court had to remind her that
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24 ¹ Mr. Beck represented that Ms. Nghiem sent her brother in her stead, with a power of attorney.

1 she was under oath. Ms. DePriest's responses regarding who she talked to and the
2 substance of her conversations were vague and evasive with one exception—Ms.
3 DePriest testified that she knew with certainty that she never discussed an involuntary
4 petition with Mr. Bral. The Court found Ms. DePriest's testimony to lack credibility.

5 Moreover, it is clear to the Court that Ms. Lora did not fully understand what she
6 signed and why she had signed it. Ms. Lora was participating at the request of Ms.
7 DePriest.

8 B. Court Determines Credibility of Witnesses

9 The Court is in the best position to judge the credibility of witnesses. See In re
10 Thiara, 285 B.R. 420, 427 (9th Cir. BAP 2002) (“On appeal, the reviewing court shall
11 give ‘due regard . . . to the opportunity of the bankruptcy court to judge the credibility of
12 the witness.’ Fed. R. Bankr. P. 8013. This deference is also given to inferences drawn
13 by the trial court.”) (internal citations omitted). Here, based upon Ms. DePriest’s
14 demeanor, the difficulty the Court encountered in eliciting testimony from Ms. DePriest,
15 the manner in which she provided vague and evasive testimony in certain areas, as
16 opposed to the clarity and decisiveness in which she responded to others, and taking
17 into consideration that short time which has elapsed (the hearing occurred on February
18 12, 2015; the events about which she testified occurred between Friday, February 6 and
19 Monday, February 9, 2015), the Court found her testimony unbelievable.

20 C. Standards for Dismissal in an Involuntary

21 “There is no single test for determining whether an involuntary petition should be
22 dismissed as having been filed in bad faith. It depends on the facts of each case.” In re
23 Mi La Sui, 380 B.R. 546 (Bankr. C.D. Cal. 2007). “Although there is a presumption of
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1 good faith in favor of the petitioning creditor, this can be overcome when the court looks
2 at the totality of the circumstances.” Id. The test is an objective test: “If a reasonable
3 person would believe that these actions constitute bad faith, then the court should find
4 they are bad faith.” Id.

5 In the present case, Ocean View Medical’s Chapter 11 case was dismissed by
6 an order entered less than two weeks ago, on Friday, February 6, 2015. The following
7 Monday, certain creditors, who were not active in the Chapter 11 case, filed this
8 involuntary petition.

9 In the context of the dismissal argument in the initial Chapter 11 case, evidence
10 was presented that perjury had been committed by Mr. Bral and that documents had
11 been fabricated. Moreover, the evidence submitted demonstrated a long pattern of Mr.
12 Bral filing pleadings in various courts in an effort to stave off a pending foreclosure, all of
13 which had been denied. The spear-heading petitioning creditor, Ms. DePriest, admitted
14 she spoke to Mr. Bral on Friday, February 6, 2015, the day the case was dismissed and
15 then, over that weekend, solicited other creditors and filed an involuntary petition on
16 Monday, February 9, 2015. Less than one week later, Ms. DePriest is unable (or
17 unwilling) to provide clear and direct testimony to this Court, and instead testifies in a
18 vague and evasive manner (except with respect to her denial of discussions of an
19 involuntary proceeding with Mr. Bral).

20 The Court finds that the timing of the filing, combined with all of the foregoing,
21 indicates bad faith.

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1 **IT IS HEREBY ORDERED** that this case is DISMISSED with a 180-day bar to
2 refiling.

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21 Date: February 12, 2015


22 Scott C. Clarkson
23 United States Bankruptcy Judge
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1 NOTICE OF ENTERED ORDER AND SERVICE LIST

2 Notice is given by the court that a judgment or order entitled (*specify*) **ORDER DISMISSING INVOLUNTARY**
3 **CHAPTER 7 CASE** was entered on the date indicated as "Entered" on the first page of this judgment or
order and will be served in the manner indicated below:

4 **I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling
5 General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following
6 person(s) by the court via NEF and hyperlink to the judgment or order. As of **February 12, 2015**, the
7 following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary
8 proceeding to receive NEF transmission at the email address(es) indicated below:

9 United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov

10 Service information continued on attached page

11 **II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or
12 order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at
13 the address(es) indicated below:

14 Nuray DePriest
15 5151 Walnut Ave #25
16 Irvine, CA 92604

17 Lewis R Landau
18 22287 Mulholland Hwy., # 318
19 Calabasas, CA 91302
20 888-822-4340
21 Fax : 888-822-4340
22 Email: Lew@Landaunet.com

23 Susan Lora
24 2555 Main St 2050
Irvine, CA 92614

Elizabeth Nghiem
11190 Warner Ave #301
Fountain Valley, CA 92708

Mark Hurwitz
Tom Tallas
Levy, Small & Lallas
815 Moraga Drive
Los Angeles, CA 90049-1633
Email: mhurwitz@lsl-la.com, dsmall@lsl-la.com

Ocean View Medical Investors LLC
2601 Main St Suite 960
Irvine, CA 92614

Service information continued on attached page

1	Barry Beitler 825 S. Barrington Ave. Los Angeles, CA 90049-6759	INTERNAL REVENUE SERVICE PO BOX 7346 PHILADELPHIA, PA 19101-7346
2		
3		
4	Beck & Martin Architects 1400 Quail St. #120 Newport Beach, CA 92660-2775	Joe C. Bral 4757 Sierra Madre Rd. Santa Barbara, CA 93110-1319
5		
6	Charlin Family Trust 344 S. Bedford Dr Beverly Hills, CA 90212-3725	John Bral Bral Realty Advisors Inc 2601 Main Street, Suite 960 Irvine, CA 92614-4217
7		
8	County of Orange Attn: Treasurer-Tax Collector P.O. Box 1438 Santa Ana, CA 92702-1438	Madison Harbor Law 17702 Mitchell North Irvine, CA 92614-6013
9		
10		
11	County of Orange P.O. Box 4515 Santa Ana, CA 92702-4515 Attn: Bankruptcy Unit	Merle S. Robboy, MD Georgette Robboy 1119 Sunflower Ave Costa Mesa, CA 92626-1629
12		
13		
14	David R. Reinstadler, M.D. Inc Amy M. Reinstadler M.D. Inc. C/o Adam J. Soibelman, Agent for Service 23901 Calabasas Rd, # 2006 Calabasas, CA 91302-1592	Michael Meisenbach 3991 MacArthur Blvd. Ste 100 Newport Beach, CA 92660-3030
15		
16		
17	Dr. Nghiem 11190 Warner Ave., # 301 Fountain Valley, CA 92708-4047	Michael Schafer 22129 Serenade Ridge Murrieta, CA 92562-3056
18		
19		
20	Gutierrez Landscaping 432 S. Starboard St Santa Ana, CA 92704-1065	Nuray DePriest 5151 Walnut Ave #25 Irvine CA 92604-2473
21		
22	Hankey Capital, LLC c/o Eugene M. Leydiker 4751 Wilshire Blvd., #110 Los Angeles, CA 90010-3838	Premier Business Bank 700 S. Flower St #2000 Los Angeles, CA 90017-4240
23		
24		
		RAMM Engineering 15216 S. Frailey Ave Compton, CA 90221-3104

1 Richard Kevin Quick
2 Christina Lynne Quick
3 3470 S Crawford Glen
Santa Ana, CA 92704-7162

4 Ryan Huntsman
2179 Vista Entrada
5 Newport Beach, CA 92660-3937

6 Smoke Guard
1915 Mark Court #100
7 Concord, CA 94520-1296

8 Sonitrol
1334 Blue Oaks Blvd
9 Roseville, CA 95678-7014

10 Soo Mi Lee
11 14252 Culver Drive # A349
Irvine, CA 92604-0317

12 Special Default Services Inc.
13 17272 Redhill Ave
Irvine, CA 92614-5628

14 Susan Lora
15 2555 Main Street # 2050
Irvine, CA 92614-3217

17 Sydney Soffer
445 Newport Boulevard
18 Newport Beach, CA 92663

19 ThyssenKrupp
20 2455 E. Parleys Way #110
Salt Lake City, UT 84109-1244

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled: **DECLARATION OF KRIKOR J. MESHEFEJIAN AND REQUEST FOR JUDICIAL NOTICE IN SUPPORT BARRY BEITLER'S OPPOSITION TO MOTION TO BIFURCATE ISSUES OF LIABILITY AND DISCHARGEABILITY IN ADVERSARY, OR TO STAY ADVERSARY UNTIL UNDERLYING LIABILITY ON CLAIMS IS DETERMINED IN ANOTHER PROCEEDING** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **October 5, 2017**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Beth Gaschen bgaschen@wgllp.com, kadele@wgllp.com; lfisk@wgllp.com; lgauthier@wgllp.com; nlockwood@wgllp.com
- Mark D Hurwitz mhurwitz@lsl-la.com, dsmall@lsl-la.com
- Gary E Klausner gek@lnbyb.com
- William N Lobel wlobel@wgllp.com, nlockwood@wgllp.com; jokeefe@wgllp.com; banavim@wgllp.com
- Krikor J Meshefejian kjm@lnbrb.com
- United States Trustee (SA) ustregion16.sa.ecf@usdoj.gov

2. **SERVED BY UNITED STATES MAIL**: On **October 5, 2017**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **October 5, 2017**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Served via Overnight Mail

Hon. Scott C. Clarkson
United States Bankruptcy Court
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5130 / Courtroom 5C
Santa Ana, CA 92701-4593

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

26 October 5, 2017

27 Date

Stephanie Reichert

Type Name

/s/ Stephanie Reichert

Signature